

MEMORANDUM OF AGREEMENT
BETWEEN
THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO
AND THE
REGENTS OF THE NEW MEXICO STATE UNIVERSITY

This Agreement, entered into by and between the **Incorporated County of Los Alamos, New Mexico**, ("County") and the **New Mexico State University, Cooperative Extension Service**, a nonprofit corporation, organized and existing under the rules and policies of New Mexico State University ("NMSU").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

I. SCOPE OF WORK

1. **NMSU Services:** NMSU shall provide the equipment and qualified personnel necessary to complete the following services:
 - A. Provide comprehensive Extension Service Programs to the residents of Los Alamos County; these programs and services will include but not be limited to horticulture , water conservation education, integrated pest management, organization of the County Fair, Master Gardener's Program, home economics, health awareness, food safety and preparation, nutrition and meal planning, and youth development (4H).
 - B. Disseminate information to the public regarding the activities of the Extension Service by use of the news media and other appropriate means of announcing activities and events;
 - C. Maintain operation of the Extension Service Offices with the facility open to the public during hours that will provide for maximum public access within the available funding level; Generally, the Cooperative Extension Offices will be open Monday through Friday 8:00 to 4:30 except for County holidays and LANL snow days.
 - D. Collaborate with County departments and/or community cultural service providers on the presentation of a minimum of two (2) events, activities, or programs; and
 - E. Adhere to NMSU's proposal, specifically with regard to budget, programs and services.
2. **Deliverables:** NMSU shall provide:
 - A. An annual financial review performed by an independent party with acknowledged financial experience to include, at a minimum, all financial records relating to the contract period, and furnishing County with a copy of such review by September 30, 2011. A copy of the Contractor's most recent financial audit performed by an accountant or accounting firm may be accepted in lieu of the financial review. This provision shall survive termination of the Agreement.
 - B. Written reports covering each three month period of the contract term beginning July 1, 2010. The reports will include financial information describing NMSU's use and expenditures of County funding and, at a minimum, summary information on:

1. The efforts undertaken and results of Contractor's solicitation of meaningful participant input and/or feedback and a demonstrated willingness to act on this information;
2. The level of participation, reported by age, gender, and residence of the participants, in the various programs, events, and other activities associated with the Cooperative Extension Office;
3. The number of requests for assistance in both the Horticulture and Home Economics Programs; and
4. The level and results of NMSU's collaboration and coordination of effort with other community service providers

Contractor shall furnish these reports to County within 30 days after the end of each reporting period.

3. Premises.

- A. County shall provide NMSU with the use of the following County facilities (all hereinafter referred to as the "Premises") during the term of this Agreement and for the uses indicated:

Rooms 122, 123, 124 and 129 in the Los Alamos Community Building located at 475 20th Street, Los Alamos, New Mexico 87544.

- B. A diagram of the Premises is attached to this Agreement as "Exhibit A" and incorporated herein for all purposes.
- C. Unless County notifies NMSU in writing otherwise, NMSU, its employees, members, volunteers and business patrons are granted non-exclusive rights to use, in common with others, the parking spaces, drives, walks, entrance ways and restrooms located on County property in which the Premises is located.
- D. NMSU shall not permit anyone other than NMSU's employees, members, volunteers and business patrons to use the Premises.
- E. NMSU will provide security and supervision of the Premises and portions of any related facilities assigned for NMSU's use, subject to County's policies and decisions regarding maintenance, repair and upkeep of said Premises.
- F. NMSU will be responsible for and pay any and all costs related to the installation, monitoring, and maintenance of any and all alarm systems required for NMSU's business.
- G. County will provide all reasonable labor, services, supplies and materials required for the upkeep, maintenance, and repair of the Premises, including custodial and janitorial services.
- H. County will pay all reasonable charges for water, electricity, gas, sewer, refuse, and other utilities attributable to the Premises. NMSU will be responsible for and pay any and all telephone charges, including installation, costs for lines, phones and related equipment.

- I. The Premises may be altered, modified, or improved from time to time by County or its agents, at the sole discretion of County.
- J. NMSU will not make any alterations, additions or improvements to the Premises, or to any County property contained thereon, without the prior written consent of County. Title to all alterations, additions or improvements to the Premises shall vest in County, except as otherwise authorized in writing by County.
- K. To protect the health and safety of the public or any person or persons using or occupying the Premises, and to minimize danger from all hazards to life and property, NMSU will take all reasonable precautions in connection with its use of the Premises and shall comply with all health, safety and fire protection rules, laws, regulations and requirements of County, and any other pertinent regulatory body.
- L. Smoking in the building and in the Premises is prohibited. It shall be the responsibility of NMSU to reasonably enforce this prohibition within the enclosed or public premises used or occupied by NMSU during the performance of this Agreement in accordance with the provisions of Chapter 18-132 of the Code of the Incorporated County of Los Alamos.
- M. County is the owner of any keys to the Premises or other space on County property and shall have the right to inspect the work and activities of NMSU in connection with its use of the Premises at such times and in such a manner as County may deem reasonably appropriate.

II. PERIOD OF PERFORMANCE

The period of performance under this Agreement shall commence on July 1, 2010 and continue through June 30, 2015, unless sooner terminated as provided herein. This agreement may be modified or extended upon mutual written agreement of the parties. NMSU acknowledges that subsequent payments due after the County's fiscal year ending June 30, 2011, shall be subject to the review and appropriation of funds by the County Council.

III. COMPENSATION

- 1. **Direct compensation.** For year one, County shall pay the sum of Ninety Five Thousand Seven Hundred Seventy-two Dollars (\$95,772.00), which amount includes applicable New Mexico gross receipts taxes (NMGR), in Twelve (12) monthly payments of Seven Thousand Nine Hundred Eighty-one Dollars (\$7,981.00). For subsequent years, compensation shall be determined per the County Extension Program Three-Way Partnership funding formula, subject to negotiation.
- 2. **Indirect annual compensation.** During the term of this Agreement County will provide use of the Premises with an estimated value of \$16,160.00, plus reasonable janitorial care, utilities and maintenance of the Premises, with an estimated value of \$17,610.00.
- 3. **Rental fee waiver.** During the term of this Agreement, County may waive the rental fees associated with NMSU's use of public facilities in Fuller Lodge and other County facilities for meetings and other events of an occasional and casual nature, determined on a case-by-case basis depending upon availability, with prior written permission from County Administrator or designee. NMSU will be responsible, however, for payment of

all charges associated with special events services including, but not limited to, set-ups, take-downs, cleaning and other special services at the County rate of \$35.00 per hour.

4. NMSU shall submit monthly invoices to the Agency's Contract Administrator showing the total amount of compensation due, the amount of any NMGRS if applicable, and the total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

IV. ASSIGNMENT

NMSU shall not assign or transfer any interest in this Agreement or assign claims for money due or to become due under this Agreement without the prior written approval of the Agency.

V. TERMINATION

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

County may terminate this Agreement with or without cause upon thirty (30) days prior written notice to NMSU. Upon such termination, NMSU shall be paid for services actually completed to the satisfaction of the County at the rate set out in Exhibit B. NMSU shall render a final report of the services performed to the date of termination.

This Agreement shall terminate on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the County Council. The County shall make reasonable efforts to give NMSU at least ninety (90) days' advance notice that funds have not been and are not expected to be appropriated for that purpose.

VI. TAXES

NMSU shall be responsible for remittance of the NMGRS levied on the amounts payable under this Agreement, if applicable.

VII. STATUS OF NMSU, STAFF, AND PERSONNEL

This Agreement calls for the performance of services by NMSU as an independent contractor. NMSU is not an agent or employee of County and will not be considered an agent or employee of County for any purpose. NMSU, its agents or employees shall make no representation that they are County employees or agents, nor shall they create the appearance of being employees or agents by using a job or position title on a name plate, business cards, or in any other manner, bearing the County's name or logo. Neither NMSU nor any employee of NMSU shall be entitled to any benefits or compensation other than the compensation specified herein. NMSU shall have no authority to bind County to any agreement, contract, duty or obligation. NMSU shall make no representations that are intended to, or create the appearance of, binding

County to any agreement, contract, duty, or obligation. NMSU shall make no representations that are intended to, or create the appearance of, providing a County program or service in order to take advantage of any County agreement or contract with a third party. NMSU shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that NMSU shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

VIII. RESTRICTED SERVICES

NMSU agrees and understands that County shall not be obligated to provide NMSU with any services that are not specifically described in this Agreement, including but not limited to, legal advice and clerical support.

IX. STANDARD OF PERFORMANCE

NMSU agrees and represents that it has the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the work described herein in accordance with the highest standard of care for performance of the Services.

X. EMPLOYEES AND SUB-CONTRACTORS

NMSU shall be solely responsible for payment of wages, salary or benefits to any and all employees or NMSUs retained by NMSU in the performance of the Services. NMSU agrees to indemnify, defend and hold harmless County for any and all claims that may arise from NMSU's relationship to its employees and subcontractors.

XI. INSURANCE

NMSU shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. NMSU shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section are a condition precedent to County's obligation to pay compensation for the Services and NMSU shall not provide any Services under this Agreement unless and until NMSU has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that NMSU has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured and provide that County will be notified no less than 30 days in advance of cancellation.

1. **General Liability Insurance.** \$1,000,000 combined single limit per occurrence.
2. **Workers' Compensation.** In an amount as may be required by law. County may immediately terminate this Agreement if NMSU fails to comply with the Worker's Compensation Act and applicable rules when required to do so.

3. **Automobile Liability Insurance** for NMSU and its employees: An amount at least equal to the minimum required by state law on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement

XII. FORCE MAJEURE

Neither County nor NMSU shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

XIII. AUDIT REPORTS

NMSU shall maintain throughout the term of this agreement and for a period of six (6) years thereafter records that indicate the level of effort and nature of services rendered. These records shall be subject to inspection by the County. The County shall have the right to audit billings both before and after payment.

XIV. CONFIDENTIALITY

Any information provided by the County to NMSU, which is confidential, shall be marked confidential and will not be made available by NMSU to any individual or organization without prior written approval of the County, unless required to disclose by a court of competent jurisdiction. If required to disclose by a court, the receiving party shall give the disclosing party notice sufficient to allow the disclosing party to move the court, or take any action to protect its proprietary information.

XV. LICENSES

NMSU shall maintain all required licenses, including without limitation all necessary professional and business licenses, throughout the term of this Agreement. NMSU shall require and shall assure that all of NMSU employees and subcontractors maintain all required licenses, including without limitation all necessary professional and business licenses.

XVI. PROHIBITED INTERESTS

NMSU agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. NMSU further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official in County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

XVII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by prior written approval.

XVIII. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

XIX. NOTICE

The State Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

XX. INDEMNIFICATION

As between the parties, each party will be solely responsible for liability arising from personal injury, including death, or damage to property arising from the act or failure to act of the respective party or of its officials, agents and employees pursuant to the Agreement. The liability of NMSU shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq., N.M.S.A. 1978, and of any amendments thereto.

XXI. EQUAL OPPORTUNITY COMPLIANCE

NMSU agrees to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations, and executive orders, NMSU agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age, or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If NMSU is found to be not in compliance with these requirements during the life of this Agreement, NMSU agrees to take appropriate steps to correct these deficiencies.

XXII. APPLICABLE LAW

This Agreement is governed by the laws of the State of New Mexico.

XXIII. RELEASE

NMSU, upon final receipt of the amount due under this Agreement, releases the County, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement. NMSU agrees not to purport to bind the County to any

obligations not assumed herein by the County, unless NMSU has express written authority to do so, and then only within the strict limits of that authority.

XXIV. COUNTY AND NMSU REPRESENTATION

Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three days after deposit in the United States Mail:

Matters concerning compliance relative to the performance of this Agreement should be directed to the County's and NMSU's Project Director at the following addresses:

County:	NMSU:
Community Services Dept. Director	County Extension Agent
Incorporated County of Los Alamos	NMSU Cooperative Extension Service
Post Office Box 30	475 20 th Street
Los Alamos, NM 87544	Los Alamos, NM 87544

Matters concerning the direction or negotiation of any changes in the terms, conditions, or amounts cited in this Agreement should be directed to the County's and NMSU's Contracting Officer, or his/her duly authorized representatives, at the following addresses:

County:	NMSU
Community Services Director	Rita Parra Neta Fernandez
Incorporated County of Los Alamos	Contract Administrator Director
Post Office Box 30	New Mexico State University
Los Alamos, NM 87544	Box 30002 MSC-3AGB OGC
(505) 662-8404	Las Cruces, NM 88003-8002
	(505) 646- 2376 1590

XXV. IF ONE OR MORE of the provisions of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby.


IN WITNESS THEREOF, the parties have caused these presents to be executed, or caused them to be executed by their duly authorized officer, in duplicate, on the dates indicated below.

ATTEST



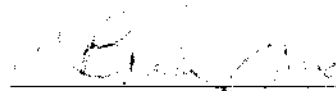
JANET FOSTER
COUNTY CLERK

By an Authorized Official of
INCORPORATED COUNTY OF LOS ALAMOS

By: 
ANTHONY J. MORTILLARO
COUNTY ADMINISTRATOR

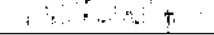
DATE

Approved as to form:



MARY M. MCINERNEY
COUNTY ATTORNEY

NEW MEXICO STATE UNIVERSITY
COLLEGE OF AGRICULTURE AND HOME
ECONOMICS

By: 
LOWELL CATLETT
DEAN & CHIEF ADMINISTRATIVE
OFFICER

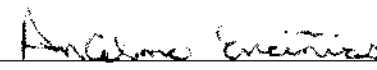
DATE

NEW MEXICO STATE UNIVERSITY
COOPERATIVE EXTENSION SERVICE

By: 
JON C. BOREN
ASSOCIATE DEAN & DIRECTOR

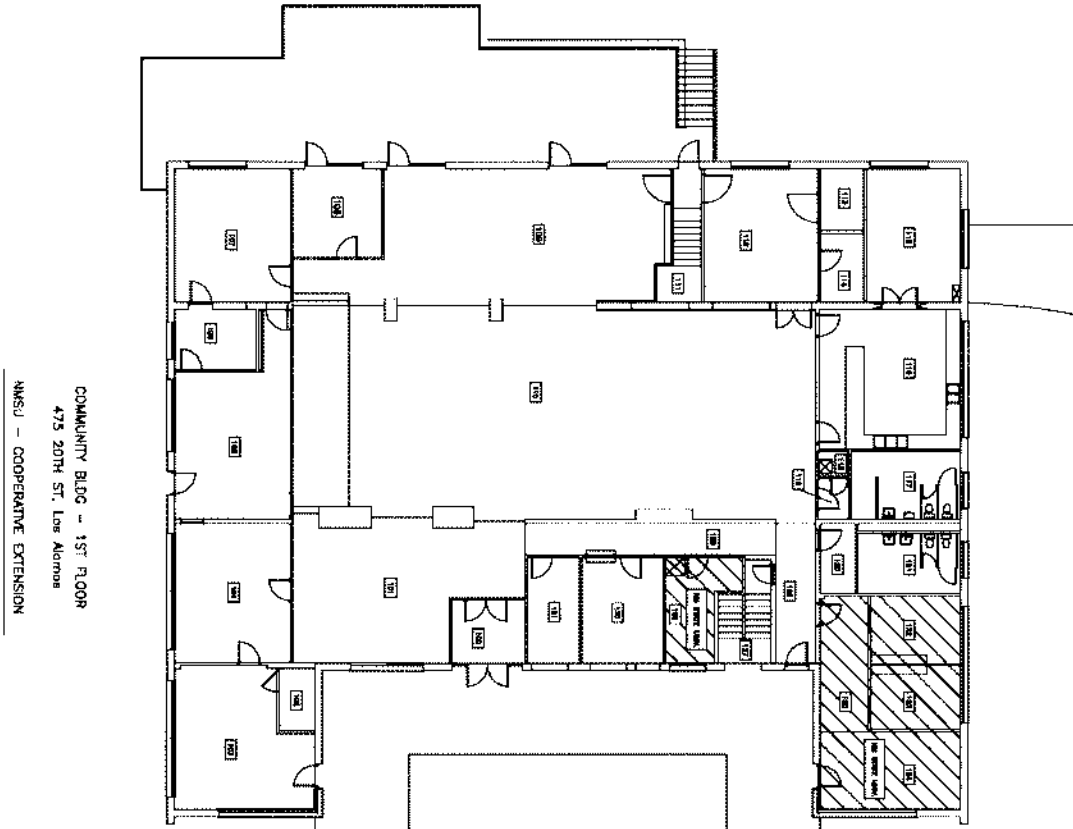
DATE

NEW MEXICO STATE UNIVERSITY

By:  7/27/10
NETA FERNANDEZ
DIRECTOR, GRANTS & CONTRACTS

DATE

Exhibit A



EVIDENCE OF COVERAGE

MEMORANDUM NUMBER:RMD-EOCFY10-0283

This Evidence of Coverage is used as a matter of information only and confers no rights upon the Certificate Holder.
This Evidence of Coverage does not amend, extend, or alter the coverage afforded by the insurance policy(ies) for the type(s) of coverage listed below.

CERTIFICATE HOLDER INFORMATION

INSURED: State of New Mexico

NMSU

MSC 3890

P.O. Box 30001

Las Cruces, NM 88003-8001

LOSS PAYEE: TO WHOM IT MAY CONCERN

**Coverage
Period**

Effective: 7/1/09 12:01 AM

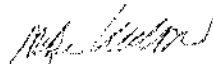
Expires :7/1/10 12:01AM

This is to certify that the State of New Mexico maintains the insurance listed below for the period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this Evidence of Coverage may be used or may pertain, the coverages afforded by the Evidence of Coverage described herein are subject to all terms, exclusions, and conditions of the insurance policy(ies) to which this Evidence of Coverage pertains.

Type of Coverage	Limit of Liability/Coverage	
A)Liability General Liability, Automobile Liability, Law Enforcement Civil Rights and Medical Malpractice	\$1,050,000	Per Occurrence
B)Property	\$500,000,000	Per Occurrence
C)Fine Arts	\$150,000,000	Per Occurrence
D)Bond	\$5,000,000	Per Occurrence
E)Blanket Accident/ADD	\$100,000	Per Occurrence

Should any of the above coverages for the Covered Party be changed or withdrawn prior to the expiration date issued above, the State of New Mexico will mail 30 days written notice to the Certificate Holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the State of New Mexico, its agents, or representatives. If you have any questions, contact:

Authorized Representative:



Date 6/29/09

Issued:

Mike Wilson, Director, General Services Department
Risk Management Division

